(1)

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

Supreme Court, U.S.
FILED
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OFFICE OE THE CLERK

Lindsey K. Springer,

Petitioner,

v.

THE INFINITY GROUP CO.,;
ROBERT F. SANVILLE, individually
and as Trustee for Infinity Group Co.,

Respondents.

Writ of Certiorari

ON WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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QUESTION(S) PRESENTED

1. Whether Judicial Branch of Government should be separate, destinct and independent from Executive and Legislative Branchs of the United States Government?

2. Whether Judicial Immunity has any Constitutional limitation?

3. Whether Court accepting S.E.C. nomination of Trustee to take control of defendant and relief defendants assets and to do accounting is act done in Courts Judicial capacity?

4. Whether a court appointed trustee, nominated by the S.E.C. in a civil enforcement action and to whom objection was raised and remains by petitioner, is entitled to judicial immunity, or any form thereof, as only a Judge should enjoy?

5. Whether publication circulated by Court-Appointed Trustee to over 10,000 investors, which purported to quote Court Order by placing quotations around statement circulated, when statement was not qucte, and to which Trustee had access to actual language relied upon by Court in Court order, and to which altered general principal of Court Order, can be held as libelous per-se for the purpose of a Motion to Dismiss?

6. Whether Court appointed Trustee, appointed as Trustee of Private held Trust agreement, nominated by S.E.C. and accepted by United States District Court Judge, can be held libel for libelous and slanderous statements published and circulated to over 10,000 alleged investment contract holders, while acting under color of an official nature?

7. Whether Court appointed Trustee, when in performance of his duty and while conducting asset distribution accounting for Trust, is legally protected by either Judicial Immunity or Quasi Judicial Immunity for published statements that are alleged to be libelous and slanderous against Petitioner, and to which are not quotes as presented to publications 10,000 plus recipients?

8. Whether communications in writing to the public which purport to be quoting findings of Judicial decrees, by purported officers of the Court, are merely held to an "accurate reflection" standard or "general principal standard" and not the "verbatim standard" usually associated with purported quotes or purported quotations involving the delicate issues surrounding libel and slanderous action in Oklahoma?

9. Whether finding of fact that alleged libelous and slanderous publication contains edited statement, by both district court and circuit courts, warrants denial of pre-answer Motion to Dismiss where movant claimed petitioner failed to state a claim to which relief can be granted involving purported quotes which were found not to be quotes?

LIST OF PARTIES

[X]All parties appear in the caption of the case on the cover page.

[ ]All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

TABLE OF CONTENTS

TABLE OF AUTHORITY.....-v-

OPINIONS BELOW.....-vi-

JURISDICTION.....-vii-

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....-viii-

STATEMENT OF THE CASE.....-1-

REASONS FOR GRANTING THE WRIT.....-8-

CONCLUSION.....-18-

INDEX TO APPENDICES

APPENDIX A

MAGISTRATE'S REPORT AND RECOMMENDATION...1

SANVILLE'S LETTER DATED MARCH 6, 1998...14

ORDER OF DISTRICT COURT, August 25-98...21

10th Circuit Final ORDER, August 26-99..26

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

Adams v State, 17 N.E. Rept.,2d Ser.85.....9

Butz v Economou, 98 S.Ct.,2894(1978).....8

Forrester v. White, 108 S.Ct 538(1988).....16

Imbler v pachtman, 96 s.Ct.,991.....8

T & W Inv. Co. Inc. v. Kurts, 588 F.2d 801.14

Stump v. Sparkman, 98 S.Ct. 1099(1978).....17

Valdez v City of Denver, 878 F.2d,1285('89) 10

STATUTES AND RULES

28 U.S.C. § 1332.....5

28 U.S.C. § 1651(a).....7

12 Oklahoma Statute 1441.....5

12 Oklahoma Statute 1442.....5

Federal Rules 12(b)(1).....6

12(b)(6).....6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Petitioner respectfully prays that a Writ of Certiorari issue in review of the judgement below.

OPINIONS BELOW

[x] For case from **federal court:**

The orders of the United States District Court appear at Appendix **A** to the petition.

The orders of the United States Court of Appeals for the Tenth Circuit appear at Appendix **A** to the petition.

JURISDICTION

[x] For cases federal court:

The date on which the United States District Court issued it order; August 25, 1998.

The date on which the United States Court of Appeals for the Tenth Circuit Affirmed District Court's Order; August 26, 1999.

Petition for Rehearing En Banc was not filed.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a).

THIS PETITION IS IN AID OF APPELLATE JURISDICTION

I. STATEMENT OF THE CASE

Begining April 2, 1997, the Security and Exchange Commission ("SEC") began a formal investigation of a private membership (169.00 to join) association referred to as The Infinity Group Company Trust ("TIGC") involving 10,000 people from every State in the Union and some territories of the U.S.

On August 26, 1997, the SEC commenced formal injunctive action in the Eastern District of Pennsylvania claiming against TIGC for violations of the Security Laws of both 1933 and 1934 ("the Acts") and also claimed against Lindsey K. Springer, d/b/a Bondage Breakers Ministries ("petitioner") (**as a mere "relief defendant" therein**) solely on basis petitioner was in possession of ministry donations (1.265 million) to which allegedly originated from the alleged conduct against TIGC and that since petitioner had allegedly not given any consideration for this donation, although no wrong doing was

alleged against petitioner, SEC claimed they could demand discorgment of the allegedly unconsidered donation from petitioner.

On August 27, 1997, the SEC, among others, requested the district court appoint a Trustee to act on its behalf to account to the SEC what the current position of all property belonging to TIGC was and to take control and possession of all property beloning to those accused of Security Law violations. These violations consisted of failure to register a security with the SEC as well as alleged activation of the anti-fraud provisions governing the sale of a registered or unregistered security in the form of an investment contract. (3rd Cir. heard Oral Argument 3-2-99, no decision yet)

On September 3,4, 1997, a preliminary hearing was held in Philadelphia wherein the United States District Court ("Philadelphia Court") continued a asset freeze of all parties named in the SEC's complaint as well

as the Court accepted the SEC's nomination of Robert F. Sanville of Sanville and Company ("Sanville") as a "Trustee" assigned to certain specific duties over petitioner's pronounced objections.

Between September 4, 1997, and the final hearing of and including February 6, 1998, Sanville and petitioner had very little communication or involvement, save the disposition of petitioner's donation then currently held.

In its Order of February 6, 1998, the Philadelphia Court continued Robert F. Sanville, C.P.A. as trustee over all funds, assets, chooses in action, property belonging to, in the possession of, beneficially owned by, or in the control of TIGC and received an additional directive by the Philidelphia Court.

Furthermore, the Philadelphia Court ordered Robert F. Sanville ("Respondent") to "as soon as practicable," "to notify all

existing investors of the terms of this [the Philadelphia Court] order, initiate proof of claim procedures in order to determine the Trust's final obligation to its investors.;.."

On March 6, 1998, a letter headed by the name "The Infinity Group Company Trust, purported to be authored by Robert F. Sanville, Trustee, P.O. Box 717, Abington, PA 19001-0717 addressed to "Persons who may have invested in The Infinity Group Company ("TIGC"):" that he had a "duty" to inform the "maybe" investors that the Philadelphia Court found they [you] "were victim of a fraud."

This letter published to its reader that on February 6, 1998, after a four-day final injunction hearing held in Philadelphia, the Philadelphia United State District Judge Dalzell found TIGC, Geoffrey P. Benson ("Benson") and Geoffrey J. O'Connor ("O'Conner") **guilty** of violating various provisions of the Security Act of 1933 and

the Exchange Act of 1934. Certainly guilty was not a finding of the district court since the action involved was injunctive.

This letter further demonstrated sound bite quotes from a plethora of orders and memorandums issued by the district court which were not ever served upon any of the "persons who may have invested with TIGC." Over 10,000 people it was alleged. This letter was not served on petitioner. Petitioner was confronted with said letter while a U.S. Attorney attempted impeachment of petitioners testimony in a unrelated case.

After several communicative attempts by petitioner to respondents, petitioner initiated a libel and slander action in the Northern District of Oklahoma citing diversity of citizenship as cause to invoke Jurisdiction pursuant to 28 U.S.C. § 1332.

On April 21, 1998, petitioner filed his complaint pursuant to 12 O.S. §§ 1441 & 1442 and demanded for a Jury Trial.

Service was perfected upon all three named defendants by private process and on May 26, 1998, one of the defendants, Robert F. Sanville, Court appointed Trustee, the Infinity Group Company, filed Motion to Dismiss petitioner's complaint against "him" pursuant to FRCP 12(b)(1) & (6).

On June 10, 1998, petitioner filed his response to the "Trustee" Motion to Dismiss along with Motions for Default Judgment and Request for Clerk to enter the Default against Robert F. Sanville, individually and The Infinity Group Company.

On June 22, 1998, TIGC and Robert F. Sanville requested the Northern District of Oklahoma allow their attorney to appear pro hac vice without fees being tendered.

On June 22, 1998, Robert F. Sanville entered a Response to petitioner's request for Default and Default Judgment against him.

On June 29, 1998, Chief Judge Kern ordered Magistrate Eagan to Report and

Recommend involving docket number "2-1" of Robert F. Sanville, Court appointed Trustee, the Infinity Group Company.

On July 24, 1998, Magistrate Eagan filed her Report and Recommendation as orderd by Chief Judge Kern. [See **Appendix A, pg. 1**]

On August 3, 1998, petitioner timely filed his objections to the Magistrates Report and Recommendations.

On August 25, 1998, Chief Judge Kern filed a final order granting the Motion to Dismiss [dkt # 2-1], disposing of all claims pending before the Northern District of Oklahoma. [**See Appendix A, pg. 21**]

On September 23, 1998, petitioner filed his Notice of Appeal and the 10th Circuit Court had jurisdiction over petitioner's Appeal and rendered a decision on August 26, 1999. [**See Appendix A, pg. 26**]

The Supreme Court of the United States of America, sitting by Constitution, has jurisdiction pursuant to 28 U.S.C. § 1651(a).

2. REASONS FOR GRANTING WRIT.

The Supreme Court has extended immunity to Federal Judges "not because of their particular location within the government but because of the special nature of their responsibilities." Butz v. Economou, 98 S.Ct. 2894 (1978).

The Supreme Court has made the "functional comparability of their judgment to those judges that has resulted in both grand jurors and prosecutors being referred to as 'quasi-judicial' officers, and their immunities being termed quasi judicial as well." Imbler v. Pachtman, 424 U.S. @ 423, 96 S.Ct @ 991.

A court appointed trustee, acting in a civil injunction action and nominated by the S.E.C. to do an accounting of assets associated with allegations against defendants, not relief defendants, and to whom is paid by the very assets to which the

S.E.C. alleged were obtain in violation of the Security Laws, should be held to answer why he published the statements against petitioner and why he did not quote the Court's order since he clearly had access to said order.

"It may be that in a popular sense, all who attend the administration of justice are judicial officers, but, in the legal sense, only those who exercise the judicial function are so considered, and the provisions of both State and Federal Constitutions, reasonably interpreted, must be considered as referring to the latter only." Adams v. State, 17 N.E. Reporter, 2d. Series 85 (1938).

Respondents were not doing any Judicial Function when they sent a letter to over 10,000 people libeling and slandering petitioner. However, the Tenth Circuit Court of Appeals decided that "the common law provides absolute immunity from subsequent damages liability for all persons-

governmental or otherwise-who were integral parts of the judicial process." Valdez v. City of Denver, 878 F.2d 1285 (1989)

Petitioner construes that respondent allegedly fits into the "otherwise" portion of this decision.

Petitioner neither was accused of any violations of Security Laws nor found to have violated any Security Laws by the SEC's complaint filed with the Philadelphia Court. The Philadelphia Court's Order and general principal was not nor did not find that petitioner had defrauded anyone out of anything.

One, some or all respondents were authorized to report the terms and conditions of the February 6, 1998, order for final injunction, discorgement, and other relief only. No authorization allowed any respondent to (1) communicate terms and conditions which either were not contained within the Court's February 6, 1998, order,

or, (2) communicate statements which were not verbatim quotes and to which were represented as verbatim quotes in order to give the statements a alleged true character.

Of the over 10,000 people noticed of the March 6, 1998, letter "to persons whom may have invested with TIGC," none of the recipients received actual notice or copy of any of the plethora of orders and memorandums issued by the Philadelphia Court.

None of the over 10,000 investors received a copy of the S.E.C.'s complaint. With Hundreds of Orders from August 26, 1997, through the date of the March 6, 1998, letter with attached Proof of Claim forms, not one single "investor" had received any consideration by the Philadelphia Court accept for the communication of respondent Sanville on March 6, 1998.

In the August 24, 1998, final order in this action, the District Court found that "in an accompanying memorandum, the

[Philadelphia] court ordered Mr. Springer (petitioner) to disgorge $1.265 million which the court had determined was at issue without proper consideration.

No memorandum accompanied the February 6, 1998, final order, contrary to the District Court discretionary determination. Even if such memorandum did accompany the February 6, 1998, final order [which it did not], no evidence was placed in this record which indicates that such accompaniment was to those whom received the March 6 letter.

The Tenth Circuit Court of Appeals has determined that petitioner's arguments on appeal are "unpersuasive."

Yes, district court found respondents did edit and publish a statement which was not true or a actual quote as purported. **App.A,pg.10** Yes, the Tenth Circuit agrees with the district court on this issue. Yes, the respondent is not a Judicial Officer, or for that matter, a licensed attorney. Yes,

respondent's letter caused damage to petitioner. However, that does not matter. What both the district court and Tenth Circuit seem to be saying is that what matters is that purported quotes do not have to be quotes, orders do not have to be orders, and judicial immunity does not have to be for the judicial branch of government.

Petitioner may have been ordered to disgorge proceeds received from a source which the district court determined violative of the Security Laws. However, this does not mean that petitioner violated the security laws. The district court never determined that petitioner had violated any laws or committed fraud against anyone.

Yet, the letter of March 6, 1998, by respondents, could and did leave the letters recipient with the conclusion that the district court determined that each investors was defrauded for petitioners personal gain. Petitioner was not known by The Infinity

Group Company ("TIGC") until January of 1997. Petitioner was never found to be a principal or even an investor of TIGC.

Attorneys received many thousands of dollars from the proceeds TIGC received from investors, and yet these attorneys are not found to have defrauded investors for their own personal gain by respondent Sanville.

Respondent even receives monthly allotments from the very funds he is charged with protecting and yet he does not believe that the investors were defrauded for his own personal gain.

If a Trustee "who is sued for civil rights violations is a court officer who shares the judge's immunity to the extent he carried out the orders of his appointing judge," (see T & W Inv. Co. v. Kurtz, 588 F.2d 801, 802-03)(10th Cir. 1978), then it is a question of fact as to whether said Trustee carried out the orders of the Judge.

The District Court in Philadelphia did

not order Respondent to mail a letter to 10,000 people purporting to quote the District Court, but actually not quoting, but editing the District Court's findings, to make Petitioner appear to have been found to have defrauded investors. No record suggest that something similar was directed by the District Court.

Defendants and Relief Defendants are separate parties. Respondent reported to the 10,000 people a known false hood. Respondent knew that with a disgorgement order ordering far in excess of Petitioners ability, Petitioner could not possibly defend the untrue and published libel and slander contained within Respondents letter.

Immunizing Respondent is an effort to run over the Judicial independence the United States Judicial Branch of Government so deserves. The question of Fact for a Jury to decide is whether Respondent did in fact carry out the Judges Order; and 2, if not,

did the publication libel/slander Petitioner. These are not issues for a Judge to decide.

"Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability." Forrester v. White, 484 U.S. 219

Petitioner is unable to seek review of the issues raised by Respondents' letter of libel and slander on the grounds that the purported quotes do not appear anywhere in any order of the Philadelphia Court. If this was an issue of review, Petitioner would have to pile inference upon inference to demonstrate how construction of Court Orders may be stretched for the purpose of reaching the appeal issues herein.

The Supreme Court once stated that "the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e. whether it is a function

normally performed by a judge and the expectations of the parties, i.e. whether they dealt with the judge in his official capacity." Stump v. Sparkman, 98 S.Ct. 1099, 1107(1978).

Since Respondent is protected at present by both the District Court and 10th Circuit Court of Appeals with Judicial Immunity, the question is begged "whether the act of editing a court order and sending edited sound bites surrounded by quotations to over 10,000 non-parties, is a function normally performed by judge in his official capacity?"

Petitioner demands that such act is not in performance of any judges official capacity and thus if the judge acted in this manner, he should be held liable for libel and slander. Since Respondents acted in this manner, they should be held liable for libel and slander as any judge might.

If a Court can act through a administrative appointment for the S.E.C.

then clearly there is no distinction between Judicial and Executive powers. No difference here, soon Judicial, Legislative and Executive power would be under one power and this might well describe the beginning of Tyranny. The United States of America is crying out for Judicial Independence.

CONCLUSION

Petitioner believes that the questions involved in this writ, which hinge upon whether a S.E.C. nominated accountant, appointed by the United State District Court to perform accounting and other asset distribution calculations, as a Trustee for a defendant, is judicially immunized for alleged libelous and slanderous publications occurring while in performance of his official duty and under color of authority of his official duty should be answered.

If a Federal Judge could not send a letter to over 10,000 alleged investors because the investors were not parties to the

action which gave rise to the district court's jurisdiction, thus any letter sent by a Federal Judge to investors would be an act **outside** his Judicial function, then any S.E.C. nominated, court accepted accountant who is made Trustee over defendant's and relief defendants assets, who sends a letter to over 10,000 investors purporting to quote a Court order and who is found to have edited the words of the district court and not to have quoted the Court's order, should be held liable personally and officially for his actions as any Federal Judge would be held.

What legitimate purpose would a Federal Judge have to issue an Order pursuant to its judicial function and then depart from the official language of that order, sending a letter which purports to quote the order to over 10,000 non-parties and to which is found not to be quoting the Court's order by two other Federal Courts? The answer, no

legitimate purpose will be served.

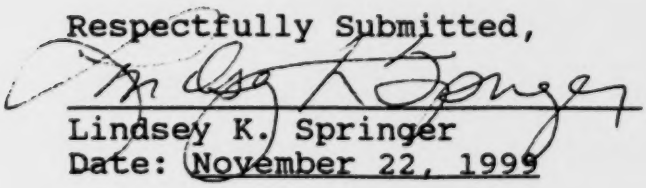
Whether the edited quotes that both the district court and Tenth Circuit Court of Appeals concluded existed, did in fact damage petitioner, is a question for a jury to decide and not the district court judge.

The petitioner request the Supreme Court hear oral argument on this case to settle the issue as to why a appointed Trustee should receive Judicial Immunity for conduct complained against said Trustee while the Trustee was performing other functions not for the Court.

Retaining Judicial Independence is mandatory if the United States of America is to remain established by Constitution with three separate branches of government.

Therefore, the petition for Writ of Certiorari should issue.

Respectfully Submitted,



Lindsey K. Springer
Date: November 22, 1999